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March 26, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW., Room 5C207
Washington, D.C. 20554

Re: **Ex Parte Presentation**
CC Docket No. 98-141
CC Docket No. 98-184

Dear Ms. Salas:

NEXTLINK Communications Inc. ("NEXTLINK") submits the attached ex parte information as a follow-up to a recent meeting with Common Carrier Bureau staff regarding NEXTLINK's position on the pending SBC Communications Inc./Ameritech Corp. merger and the proposed Bell Atlantic/GTE Corporation merger.

The attached documents include: (i) testimony filed by NEXTLINK at the Illinois Commerce Commission and the Public Utilities Commission of Ohio opposing the proposed SBC Communications Inc/Ameritech Corp.; and (ii) examples documenting NEXTLINK's use of benchmarking in the interconnection negotiation process with incumbent local exchange carriers.

Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Daniel Gonzalez
Director, Regulatory Affairs

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cc: Jennifer Fabian, Policy and Program Planning Division, Room 5C207

ATTACHMENT ONE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application	)	
of SBC Communications In., SBC	)	
Delaware, Inc., Ameritech Corporation,	)	Docket No. 98-1082-TP-AMT
and Ameritech Ohio for Consent and	)	
approval of a Change of Control.	)	

DIRECT TESTIMONY OF

DANIEL GONZALEZ

ON BEHALF OF NEXTLINK Ohio, INC.

Q. Please state your name and business address for the record.

A. My name is Daniel Gonzalez and my business address is 1730 Rhode Island Avenue, N.W., Suite 1000, Washington D. C. 20036.

Q. By whom are you employed and in what capacity?

A. I am employed by NEXTLINK Communications, Inc. as Director, Regulatory Affairs.

Q. Please provide a summary of your relevant professional and educational experience.

A. Prior to joining NEXTLINK Communications, Inc. in September 1997, I served as Legal Advisor to Federal Communications Commission ("FCC") Commissioner Rachelle B. Chong from February 1996 until September 1997. My primary responsibility in that position was to advise Commissioner Chong on legal and policy matters relating to the regulation of domestic telecommunications common carriers. From June 1995 until February 1996, I served as Legal Assistant to the Chief of the FCC's Common Carrier Bureau. In that position I advised the Common Carrier Bureau Chief on a range of policy and legal matters including, but not limited to: federal tariffing, video dialtone, jurisdictional separations, and the FCC's accounting and auditing functions. Previously, from September 1990 until June 1995, I served as a staff attorney in the Common Carrier Bureau's Policy and Program Planning Division and Accounting and Audits Division.

I obtained a Juris Doctor degree in 1990 from the Hofstra University School of Law and a Bachelor of Arts Degree in Political Science from State University of New York in 1987.

Q. Have you previously testified before this commission or other regulatory bodies?

A. I have not previously testified before the Public Utilities Commission of Ohio (the "Commission"). I have appeared as a witness, on behalf of NEXTLINK Pennsylvania L.L.P, before the Pennsylvania Public Utility Commission during an arbitration hearing regarding NEXTLINK Pennsylvania's efforts to secure an interconnection agreement with Bell Atlantic.

Q. What are your overall recommendations to the Commission in this matter?

A. My recommendation is that the Joint Application should not be approved by this Commission because the acquisition of Ameritech Corporation by SBC Communications, Inc. (the "Joint Applicants") would, contrary to Ohio law, not promote public convenience nor result in the provision of adequate service for a reasonable rate, rental, toll, or charge. It is my opinion, therefore, that this acquisition violates Ohio law. Alternatively, if the Commission nonetheless considers approving the Joint Application, my recommendation is that the Commission impose certain pre-approval conditions and post-approval conditions on the Joint Applicants that are necessary to protect the public interest. These recommendations are based on my analysis of the Joint Application and the experiences of NEXTLINK's California affiliate after SBC acquired Pacific Bell and NEXTLINK's Pennsylvania and New York affiliates after Bell Atlantic merged with NYNEX.

Q. Are you familiar with the Joint Application filed by the Joint Applicants in this proceeding?

A. Yes. I have reviewed the Joint Application and supporting documents filed by the Joint Applicants in this proceeding.

Q. Are you familiar with Section 4905.402 of the Ohio Revised Code?

A. Yes. Section 4905.02 sets forth the statutory requirements for Commission review and approval of the Joint Application. In particular, that section provides that in order "to obtain approval the person shall file an application with the commission demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge."

Q. Are you familiar with Section 4905.402(C) of the Ohio Revised Code?

A. Yes. Section 4905.402(C) provides that the Commission "shall adopt such rules as it finds necessary to carry out this section."

Q. Should the proposed acquisition cause any concerns for the Commission under Section 4905.402?

A. Yes. An acquisition of one Bell Operating Company ("BOC") by another will not provide the pro-competitive benefits propounded by the Joint Applicants, but instead, will have anti-competitive results for the local exchange market – both harming existing competition and eliminating a potential competitor to an entrenched Ohio telecommunications provider. The Commission should carefully review the competitive implications of this proposed acquisition,

and take action to ensure a result that does not have a significant adverse effect on competition or any adverse rate impacts on retail customers.

Q. How do you respond to the position of the Joint Applicants that the acquisition is necessary for them to obtain the scope and scale of a nationwide telecommunications carrier?

A. In their application filed with the FCC, SBC and Ameritech stated that they intend to enter the thirty largest markets outside their combined service territories within a year of the proposed acquisition. (Merger of SBC Communications, Inc. and Ameritech Corporation, Description of the Transaction, Public Interest showing, and Related Demonstrations (July 24, 1998) (hereinafter "SBC -Ameritech Merger Filing")). This Commission should not be distracted, however, by SBC's and Ameritech's emphasis upon their proposed National-Local Strategy and should remain focused on the fundamental facts of the proposed acquisition itself and its impact on existing competition in Ohio. Moreover, there is simply no guarantee that the companies will pursue their stated intention to enter these additional markets, and there are significant reasons to doubt that consummation of the second largest merger in the nation's history is a necessary prerequisite in order to do so. (SBC's and Ameritech's proposed $62 billion combination would be second only in size to the merger of Citibank and Travelers and would be the largest combination of telecommunications companies.)

Q. What competitive issues should the Commission consider?

A. The Commission should consider the fact that SBC's "National-Local" strategy would include any Ohio markets that SBC had targeted for competitive entry. If SBC is permitted to acquire Ameritech, obviously SBC's plans to provide a competitive alternative to Ameritech in

those markets will be dropped. For consumers in those Ohio markets then, the scope and scale that SBC and Ameritech seek to achieve in order to compete elsewhere will serve only to bolster Ameritech's existing monopoly over local services. However, even if SBC did not have plans to enter any Ohio markets, this Merger will eliminate SBC as a competitor. Let me explain my answer. Ameritech up until the announcement of the merger had pursued a strategy to enter out-of-region markets in several states, including Missouri, California and Texas. Thus, based upon the Joint Applicants National-Local Strategy argument that the incumbents with whom they will be competing (i.e., Bell Atlantic, US West, BellSouth and GTE) will choose to respond by entering the Joint Applicant's markets. If the competitive response argument set forth by the Joint Applicant's is correct, then as a result of Ameritech's entry into SBC's territory, SBC would have responded by entering the Illinois market and therefore, as a result of this merger a competitor has been eliminated. It also must be true then, that if SBC would not have entered Ameritech's market in response to Ameritech entry into SBC's territory, then a key premise of the Joint Applicant's National-Local Strategy is fatally flawed.

Moreover, the applicants claim additional pro-competitive benefits from the acquisition itself, including cost savings and improvements in their compliance with the market opening requirements of the Telecommunications Act of 1996 ("1996 Act"). Similar to the applicants' effort to promote their out-of-region entry strategy, the claimed benefits of their proposed union do not withstand close scrutiny. The Commission should weigh any claimed benefits against the significant negative impact on the companies' compliance with market opening requirements and the Commission's ability to enforce its local competition rules.

Nor should the Commission lose sight of the dramatic impact that this acquisition would have on the local telecommunications market. A combined SBC and Ameritech would dominate

the market as the largest local phone company in the United States, with control of more than fifty-seven million phone lines from Columbus to San Francisco. It is in those markets, including Ohio, where SBC and Ameritech have incumbent status, monopoly control, almost one hundred percent market share and ownership of essential facilities that the proposed acquisition's negative effect on competition will be the greatest.

Clearly, these factors would produce a significant adverse effect on competition and thus will not promote the public convenience.

Q. Are the Joint Applicants' claims that they need greater size to compete in out-of-region markets supported by the facts?

A. In contrast to SBC's and Ameritech's claims that enormous size is necessary to support out-of-region entry, there has been widespread entry by countless new entrants to the local telecommunication industry in markets all across the country. In Ohio alone, over eleven new companies have entered the local market to provide local services in competition with Ameritech. It cannot be emphasized enough that many of these companies, including NEXTLINK, are much smaller than SBC or Ameritech and yet they have been able to begin to pursue market entry on a national scale.

Both companies' past history contradicts their position that the combination of the two companies is necessary to support out of region entry. For example, Ameritech, until the announcement of the proposed acquisition by SBC, had pursued a strategy to enter out-of-region markets in several states, including Missouri, California and Texas. Ameritech had taken several steps to enter these markets, including obtaining state certification, signing interconnection

agreements with the incumbent, SBC, and making announcements that it intended to provide services in key markets in those states. For example, Ameritech was certified as a competitive local exchange carrier in Missouri earlier this year and had announced plans to offer packages of local, long-distance and cellular service to St. Louis area residential customers in April 1998. On January 3, 1998, SBC subsidiary Pacific Bell submitted an interconnection agreement with a wholly owned subsidiary of Ameritech for approval by the California Public Utilities Commission. Finally, an SBC-Ameritech interconnection agreement was approved by the Texas Public Utility Commission in November 1997. Ameritech's plans to enter these SBC markets, as well as the obvious fact that other far smaller companies have already entered those markets, demonstrates that both SBC and Ameritech already have the ability to provide long distance and local services in out-of-region markets.

Q. Are there any other reasons why SBC and Ameritech do not need to combine in order to enter out of region markets?

A. Yes. This is even more apparent after comparing Ameritech or SBC against any competitive local exchange carrier ("CLEC") in the country. The size of either Ameritech or SBC alone dwarfs the local exchange assets of any CLEC. SBC reports that its market value is $80 billion and that Ameritech has nearly $28 billion in assets. Despite their significantly smaller size, and the fact that most CLECs did not even exist prior to the 1996 Act, CLECs have begun to provide competitive service in almost every market while these two telecommunications Goliaths continue to sit on the sidelines. SBC and Ameritech's tremendous advantage in size does not even take into consideration the additional advantages that SBC and

Ameritech possess as incumbent local exchange carriers ("ILECs") which include their significant operational experience and their existing local exchange facilities. It is clearly not a question of size that has prevented Ameritech and SBC from entering new markets, but rather a business decision to focus on consolidating monopoly control in their existing incumbent territories, in order to serve large, Fortune 500 Companies on a national basis. (See page 7, Direct Testimony of James Kahan).

Q. What significant barriers to entry have CLECs struggling against these large monopolies faced?

A. Barriers to entry in local markets are mainly attributable to the actions of incumbents such as SBC and Ameritech that discriminate against new competitors. As we approach the third anniversary of the passage of the 1996 Act, no ILEC is in compliance with the market opening requirements of the Act and no BOC has met the pro-competitive requirements of the competitive checklist in Section 271. SBC and Ameritech essentially admit their own continuing failure to do so in the application they filed with the FCC, where they state that "This combination is absolutely necessary to... (b) continue and complete the opening of our local markets to competition." (SBC-Ameritech Merger Filing at 4-5.)

Only last year, the FCC rejected Ameritech's application under Section 271 on the basis of Ameritech's failure to provide competitors with nondiscriminatory access to its operations support systems ("OSS"). Since that time Ameritech has not even pursued Section 271 authority for Ohio or any of its other in-region states. More recently, both the state commission in Texas and the state commission staff in California concluded that SBC had not yet met the

requirements of the competitive checklist. (Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251, Public Utility Commission of Texas, Commission Recommendation (May 21, 1998) (hereinafter "Texas Recommendation"), the California Public Utilities Commission Telecommunications Division Final Staff Report, Pacific Bell (U 1001 C) and Pacific Bell Communications Notice of Intent to File Section 271 Application for InterLATA Authority in California, October 5, 1998 (hereinafter "California Staff Report"), and the Draft Decision of Administrative Law Judge Reed which includes: (Rulemaking 93-04-003) filed April 7, 1993, (Investigation 93-04-002) filed April 7, 1993, (Rulemaking 95-04-043) filed April 26, 1995, and (Investigation 95-04-044) filed April 26, 1995, (hereinafter "Draft Decision of ALJ Reed").) The Public Utility Commission of Texas stated that in order to be granted 271 authority SBC needed to show "by its actions that its corporate attitude has changed and that it has begun to treat CLECs like its customers." (Texas Recommendation at page 2.) On November 18th, Texas PUC staff issued a "Final Staff Status Report on Collaborative Process, Project No. 16251, Investigation of Southwestern Bell Telephone Company Entry Into The Texas InterLATA Telecommunications Market." In this document, Texas staff reviewed SBC's progress in meeting the recommendations set forth in the May 1998 Texas Recommendation. The November 18th document finds that SBC has made substantial progress but has still fallen short on a number of items.

Both SBC and Ameritech have used every means at their disposal to fight the efforts of this Commission, the FCC and other state commissions to implement local competition rules. SBC, after supporting the passage of the Telecommunications Act, in an about face, sued to overturn the provisions of the 1996 Act that forced it to open its local markets to competition.

For its part, Ameritech has continued to refuse to pay CLECs legitimate reciprocal compensation payments despite clear contractual obligations to do so and after almost every body of competent jurisdiction has rejected Ameritech's arguments to the contrary. Most recently, on October 20, 1998, NEXTLINK advised Ameritech that it would adopt, in its entirety the Interconnection Agreement entered into between Ameritech and MCImetro Access Transmission Services Inc. Instead of providing NEXTLINK the same compensation arrangement for the exchange of local traffic as contained in the MCI agreement, Ameritech, insisted on modifying the MCI agreement. Ameritech took such a position even though it was in clear violation of Federal and Michigan law. On December 3, 1998, Judge Mace issued a bench ruling in NEXTLINK's Request for Summary Disposition (U-11825). Judge Mace found in favor of NEXTLINK and issued a fine against Ameritech in the amount of $40,000 a day from the date of October 20, 1998, which was the date that Ameritech refused to engage in an agreement with NEXTLINK. In addition, Judge Mace also awarded NEXTLINK its legal costs. NEXTLINK believes neither company should be allowed to leverage their refusal to comply with the requirements of the 1996 Act into a justification for further consolidation of monopoly control.

Q. Do the benefits claimed by the Joint Applicants promote the public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge have attributed to the proposed acquisition?

A. No. SBC and Ameritech claim that SBC's acquisition of Ameritech will produce numerous synergies, result in unprecedented pro-competitive effects, and lead to substantial

benefits for the combined companies' current and future customers, both inside and outside of the companies' traditional service areas.

SBC and Ameritech claim that their combined operations will result in significant cost savings, promote innovation, and improve their ability to comply with the market-opening requirements of the 1996 Act.

As an initial matter, the effort to combine the companies will have a tremendous cost in terms of energy and focus that will detract from the ability of the companies to engage in other activities such as compliance with the competitive requirements of the 1996 Act. Because of the efforts required to implement the acquisition, the combined entity will have fewer, not greater, resources to concentrate on innovation and the development and deployment of advanced services. It is also unclear where the combined company will eliminate "duplicative" costs to achieve the economies of scale that SBC and Ameritech claim will result from the acquisition. SBC and Ameritech have stated publicly that employment levels in its five state region will not be reduced due to this transaction .... (Joint Application of SBC Communications and Ameritech of Ohio at page 9), though the Joint Applicant's have provided no specific detail for Ohio employment levels. The combination of network facilities and operations support systems in and of itself is also not likely to be a source of savings because both companies have significant investments in different and conflicting legacy systems. In addition, neither company alone has yet completed providing competitors with nondiscriminatory access to the legacy systems within each company. The effort needed to integrate the vast number of separate systems used by the two carriers will only serve to delay the work necessary to provide competitors with nondiscriminatory access to their OSS functions. Because of the tremendous

amount of work necessary, the effort to achieve significant savings through combining operations is unlikely to succeed in the near term.

Most importantly, the Commission should take great care to determine the real impact this proposed acquisition would have on Ohio. For example, the promise by SBC and Ameritech that there will be no net job loss does not mean that Ohio could not see a reduction in work force. The new merged company might maintain the same number of jobs, but that would not prevent it from significantly reducing the number of jobs in Ohio while increasing the number of positions in San Antonio. SBC and Ameritech's current explanations of their proposed acquisition do not provide sufficient information for the Commission to make an informed choice on what the real impact of this transaction would be for Ohio.

In sum, the claimed benefits are illusory to Ohio and any showing of public convenience is not discernable.

Q. Are other BOC mergers relevant to this proceeding?

A. Yes. Since the passage of the 1996 Act, there have been two mergers between BOCs. In February 1997, SBC acquired Pacific Telesis, and in August 1997, Bell Atlantic completed its acquisition of NYNEX. The Commission should take these two previous consolidations into account when reviewing the currently proposed acquisition, and the Commission should review the impact each previous merger had on competitive conditions in the relevant local markets and the extent to which the promises of the merging companies have not been met. Compared to the previous two mergers between BOCs, this proposed acquisition would lead to an even greater consolidation of market control and reduce the number of BOCs from five to four. The merged

company would have control of over fifty-seven million access lines nationwide. Based on the results of previous BOC consolidations, this proposed acquisition will lead not only to greater consolidation, but a deterioration in the companies' compliance with the pro-competitive requirements of the 1996 Act. In fact, NEXTLINK's experience is that both SBC and Bell Atlantic, after their previous mergers, have spread the most egregious and anti-competitive policies and activities throughout their post-merger service territories. This "lowest common denominator" approach has significantly damaged the environment for local competition in Bell Atlantic's and SBC's territories where new entrants now face larger incumbents employing an expanded array of anti-competitive tactics.

Furthermore, the continued reduction in the number of incumbent carriers will deprive the Commission of valuable comparative information concerning the different levels of performance of incumbents across the country. Such information is critical to the Commission's ability to monitor and enforce Ameritech's compliance with Ohio law and the 1996 Act. Without a substantial number of similarly-sized incumbent carriers, it will be much easier for Ameritech to provide poorer quality service to its competitors and engage in greater anti-competitive activity because there will be fewer companies that can be used by the Commission as a benchmark to measure nondiscriminatory treatment required by the 1996 Act.

Q. Do other NEXTLINK affiliates have experiences that lead to the conclusion that this acquisition would not promote public convenience nor result in the provision of adequate service for a reasonable rate, rental, toll or charge?

A. Yes. Before its acquisition by SBC, Pacific Telesis was far from a model of compliance with the requirements of the 1996 Act. Yet, since the merger the situation has gotten worse. As discussed previously, Pacific Bell has not yet met the market-opening requirements of the competitive checklist. (California Staff Report), and (Draft Decision of ALJ Reed). In addition, the California Ratepayer Advocate reported that the impact of SBC control of Pacific Bell was higher prices, worse service and less competition in California. (Report On Pacific Bell's Handling of Residential Service Ordering, (Redacted Version), Office of Ratepayer Advocates, California Public Utilities Commission (June 4, 1998).) Consumer groups have further criticized SBC for violating privacy rules. (Id.)

NEXTLINK's California affiliate has every day, real life experience with SBC. NEXTLINK's experience also demonstrates that SBC has acted to frustrate and limit competition in California. NEXTLINK has experienced discrimination in four key areas: (1) interconnection, (2) access to unbundled loops, (3) number portability, and (4) access to 411 and E911. For example, Pacific Bell requires NEXTLINK to route all traffic to a single access tandem denying NEXTLINK the network redundancy needed to ensure its customers can complete their calls and that Pacific Bell uses within its own network. Pacific Bell has also limited NEXTLINK's ability to compete by providing inadequate unbundled loop provisioning to NEXTLINK. Pacific Bell further limits NEXTLINK's access to unbundled loops by requiring NEXTLINK to obtain collocation in every central office where NEXTLINK seeks to access unbundled loops. In addition, Pacific Bell often fails to coordinate its implementation of number portability with the transfer of a customer from Pacific Bell to NEXTLINK. These are only but a few examples of the continuing efforts of Pacific Bell to delay and damage competition in the

state of California. NEXTLINK's experience with Pacific Bell therefore, has not shown improvement since its acquisition by SBC, but continued discriminatory treatment.

In sum, SBC's takeover of Pacific Bell has had a significant adverse effect on competition and adverse rate impacts on retail customers in California. There is no reason to believe that SBC's takeover of Ameritech will lead to anything different in Ohio.

Q. Has the Bell Atlantic-NYNEX merger demonstrated the risks associated with approval of a BOC merger?

A. The FCC, in reviewing the merger application of Bell Atlantic and NYNEX, concluded that the public interest standard required that the merger enhance competition.

> A merger will be pro-competitive if the harms to competition – i.e., enhancing market power, slowing the decline of market power, or impairing this Commission's ability properly to establish and enforce those rules necessary to establish and maintain the competition that will be a prerequisite to deregulation – are outweighed by benefits that enhance competition. If applicants cannot carry this burden, the application must be denied. (Applications of NYNEX Corp., Transferor and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, 12 FCC Rcd 199895, 19987 at para. 2 (1997) ("Bell Atlantic Merger Order").

The FCC, in reviewing the merger application of Bell Atlantic and NYNEX concluded that, on balance, the merger as originally proposed was not in the public interest. (Bell Atlantic Merger Order at para. 12.) Only after Bell Atlantic and NYNEX made additional commitments and agreed to certain conditions did the FCC conclude that "While this remains a close case, these conditions allow us, in this case, to find that the transaction, as supplemented by these

conditions, will be in the public interest." (Id.) It is clear therefore, that the FCC considered the commitments made by Bell Atlantic and NYNEX to be critical to its approval of the merger.

In terms of the size and nature of the transaction, there are some similarities between SBC's proposed acquisition of Ameritech and the Bell Atlantic merger with NYNEX. The proposed acquisition, however, is larger in terms of market value and the number of access lines to be consolidated. It also reduces the number of large local exchange carriers even further than previous mergers. However, the general public interest benefits claimed by SBC and Ameritech for the proposed acquisition by SBC of Ameritech are much less tangible than those put forth by Bell Atlantic and NYNEX. In addition, the evidence for potential competition between SBC and Ameritech is much stronger than was present in the FCC's proceeding reviewing the merger between Bell Atlantic and NYNEX. In light of the extremely close decision made by the FCC to conditionally approve the Bell Atlantic merger, the Commission should consider not only how the Joint Application for the SBC/Ameritech proposed acquisition presents even fewer concrete public interest benefits, but also the dismal failure of Bell Atlantic to honor the commitments it made to persuade the FCC to approve its merger.

In fact, NEXTLINK's experience with Bell Atlantic after its merger with NYNEX was approved demonstrates that even a carefully crafted consent decree can be insufficient to curb anti-competitive conduct by carriers with monopoly power. As part of its commitments to the FCC, Bell Atlantic agreed to measure its performance and provide performance reports. (Bell Atlantic Merger Order at para. 13.) It also committed to negotiate remedies for its performance below parity. (Id.) Once the merger was complete, however, Bell Atlantic began to backtrack from all of its commitments to the FCC. In addition, Bell Atlantic has vigorously fought efforts to introduce pro-competitive steps taken in New York to other states in its incumbent territory.

Even now, over a year after its merger, Bell Atlantic has not yet completed its efforts to standardize its operations and interaction with CLECs across its entire service territory.

In NEXTLINK's attempts to negotiate with Bell Atlantic, NEXTLINK found that Bell Atlantic had implemented several of its performance reporting commitments through the use of aggregate performance measures such that it could mask its performance for individual CLECs. Bell Atlantic has also refused to negotiate meaningful performance remedies for substandard performance by Bell Atlantic. Bell Atlantic has built into its performance remedies significant exceptions to hide any poor performance. For example, Bell Atlantic refuses to even report certain transactions that it claims are statistically insignificant because they did not meet a certain numerical threshold. Bell Atlantic then insists on canceling poor performance in certain service areas based on Bell Atlantic's good performance in other service areas or even Bell Atlantic's good performance in previous months. Considering all of the exceptions that Bell Atlantic insists on including in its implementation of its commitment to provide performance reports and remedies, Bell Atlantic has managed to significantly weaken the impact of its commitment towards enhancing the ability of competitors to enter Bell Atlantic's markets.

Bell Atlantic also has failed to accurately report to the FCC the information that it committed to provide. The FCC stated that it was concerned "about the error rates [it had] found in the three submissions Bell Atlantic has filed to date." (Letter from Kenneth Moran, Chief, Accounting Safeguards Division, Common Carrier Bureau, FCC, to Ms. Patricia E. Koch, Assistant Vice President, Government Relations - FCC, Bell Atlantic (June 24, 1998) attached as Exhibit 1). The FCC has had to repeatedly direct Bell Atlantic to improve or correct the performance reports that it committed to file with the FCC. (Letter from Kenneth Moran, Chief, Accounting Safeguards Division, Common Carrier Bureau, FCC, to Ms. Patricia E. Koch,

Assistant Vice President, Government Relations - FCC, Bell Atlantic (April 13, 1998) attached as Exhibit 2; Letter from Kenneth Moran, Chief , Accounting Safeguards Division, Common Carrier Bureau, FCC, to Ms. Patricia E. Koch, Assistant Vice President, Government Relations - FCC, Bell Atlantic (July 6, 1998) attached as Exhibit 3). Although it appears that Bell Atlantic has begun to take steps to improve its performance, the significant delay from when it initially made its commitments to provide this information is further evidence that such commitments do not always lead to improvements in the competitive environment. In the meantime, Bell Atlantic has been able to exploit the anti-competitive aspects of its merger with NYNEX.

Further, Bell Atlantic has not agreed to extend pro-competitive conditions for market entry to all of its states, and in fact, has continued to maintain unnecessary distinctions between the service territories of the original companies. A critical failure in this regard is Bell Atlantic's refusal to export successful market opening developments from New York to other states in its territory and its attempts to pare back those commitments in New York itself. This refusal has frustrated local competition and caused additional delay and expense for CLECs forced to re-litigate the same battles in each and every one of Bell Atlantic's thirteen states. Bell Atlantic's actions only serve to demonstrate the strengthened ability of an even larger monopolist to resist and subvert the development of local competition across its incumbent service territory.

Q. What should the result of the Commission's review of the Joint Application be?

A. My recommendation is that the Commission should deny approval of the Joint Application because it is contrary to Section 4905.402 in that it will not promote public convenience nor result in the provision of adequate service for a reasonable rate, rental, toll, or

charge. However, should the Commission none-the-less not reject the Joint Application, the Commission should impose both pre-approval conditions and requirements and post-approval conditions and requirements on the Joint Applicants as conditions for its approval of the acquisition of Ameritech by SBC.

Q. Does the Commission have the authority to impose such conditions and requirements on the Joint Applicants?

A. Yes. As earlier stated, Section 4905.402(C) empowers the Commission to "adopt such rules as it finds necessary to carry out this section."

Q. What pre-approval conditions should the Commission impose?

A. NEXTLINK urges the Commission to impose upon Joint Applicants pre-approval conditions that are based on the conditions and requirements adopted by the FCC in its approval of the Bell Atlantic/NYNEX merger. The Commission, however, should strengthen and improve the conditions initially adopted for Bell Atlantic/NYNEX because NEXTLINK's experience in New York and Pennsylvania demonstrates that even a carefully-crafted consent decree may be insufficient to curb anti-competitive conduct. What NEXTLINK found was that once the Bell Atlantic/NYNEX merger was consummated, the newly merged company quickly began to disavow or distort the pro-competitive safeguards it had voluntarily adopted.

NEXTLINK urges the Commission to consider Bell Atlantic/NYNEX's compliance with the FCC's merger requirements during the past year. Such an examination will permit the

Commission to identify which acquisition requirements and conditions are effective, and which are not. The knowledge gained from this analysis will enable the Commission to craft new and more stringent safeguards that would prohibit any potential backtracking by SBC/Ameritech if and when approval of SBC's acquisition of Ameritech is obtained.

A closer look at Bell Atlantic/NYNEX's actions reveal that the company has managed to successfully backtrack from its commitment to the FCC to produce performance monitoring reports designed to identify discrimination in the provision of interconnection, unbundled network elements, and resale service. For example, Bell Atlantic/NYNEX refused to report transactions it claimed were "statistically insignificant" because they did not meet a certain reporting threshold. In the case of reporting local loop orders, Bell Atlantic refused to report anything less than 1000 orders made by any carrier on a monthly basis. In addition, Bell Atlantic/NYNEX attempted to report performance on an aggregated basis in an effort to mask its treatment of individual competitive local exchange carriers. Moreover, Bell Atlantic/NYNEX is currently not held accountable for service provisioned below the statutory "parity" standard because its existing performance reports essentially permit Bell Atlantic/NYNEX to use a statistical construct to offset "bad" performance with "good" performance in another service area.

One of the most important pro-competitive safeguards that the FCC imposed on Bell Atlantic/NYNEX is the duty to negotiate into interconnection agreements enforcement mechanisms that ensure compliance with each performance standard. Unfortunately, Bell Atlantic/NYNEX has successfully sidestepped this requirement as well. For example, Bell Atlantic/NYNEX has consistently refused to negotiate the inclusion of incident-based liquidated damage enforcement provisions into its interconnection agreements. Instead, Bell

Atlantic/NYNEX has put in much time and effort to design an elaborate system of "performance credits" that provide CLECs with rebates on recurring and/or non-recurring charges associated with the particular service provisioned below the "parity standard." Bell Atlantic/NYNEX's proposed performance credits, however, rebate only five (5) to ten (10) percent of a service charge. These "performance credit" based rebates are woefully inadequate and provide no incentive for an RBOC to provide non-discriminatory service.

NEXTLINK's experience in Pennsylvania and New York demonstrates that this Commission, as a prerequisite for approving the merger, must establish a mandatory and detailed performance reporting requirement that will enable competitive service providers to quickly and clearly determine whether SBC/Ameritech is provisioning service in a non-discriminatory fashion. The Commission must ensure that any performance reporting requirement it adopts will require SBC/Ameritech to report all service transactions on a CLEC-by-CLEC disaggregated basis, and will not permit SBC/Ameritech to use any statistical model that allows "bad" performance in one service category to be offset by "good" performance in another service category, nor to automatically omit data that SBC/Ameritech deem "insignificant".

More importantly, the Commission must require that SBC/Ameritech include in all of its CLEC interconnection agreements self-executing incident-based liquidated damage enforcement provisions to ensure Ameritech complies with Commission and Interconnection obligations (e.g. installation intervals). Such enforcement provisions are administratively efficient because they require little, if any, regulatory oversight and they also ensure that the incumbent monopolist has the right incentive to provision service at the statutory "parity" standard.

Q. What post-approval conditions should the Commission impose?

A. NEXTLINK recommends that the Commission adopt a post-approval condition that SBC/Ameritech submit to a post-approval compliance proceeding before the Commission that would be conducted on an annual basis until SBC/Ameritech can demonstrate that the local market in Ohio is irreversibly open to competition. This proceeding would require SBC/Ameritech to show that it is in full compliance with all Federal and State acquisition conditions and requirements.

NEXTLINK also recommends that the Commission adopt a post-approval condition that would require SBC/Ameritech to offer in Ohio any technically feasible service, facility, and/or interconnection arrangement that SBC/Ameritech currently or subsequently provides in any other state within its combined service territory.

Q. In summary, what should the Commission's action be regarding the Joint Application?

A. The Commission should deny the Joint Application from SBC and Ameritech. SBC's acquisition of Ameritech provides no verifiable competitive benefits to Ohio, but instead harms existing competition and eliminates a potential competitor, which violates Section 4905.402 to promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. After the Commission has reviewed all of the facts, I am confident that the Commission will conclude that this proposed acquisition is not permitted under Ohio law and is not in the best interests of Ohio.

However, should the Commission determine that it will not reject the Joint Application, the Commission should impose the pre-approval and post-approval conditions set forth in this testimony.

Q. Does this conclude your testimony?

A. Yes it does.

CERTIFICATE OF SERVICE

I, Theresa Powell, hereby certify that copies of the foregoing Direct Testimony were served on the parties below, via U.S. mail on this 10th day of December 1998.

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Federal Communications Commission
Washington, D.C. 20554

Adopted: June 24, 1998

Released: June 24, 1998

Ms. Patricia E. Koch
Assistant Vice President,
Government Relations - FCC
Bell Atlantic Corporation
1300 I Street NW, Suite 400W
Washington, DC 20005

Dear Ms. Koch:

In this letter, the Accounting Safeguards Division ("ASD") addresses the resolution of certain issues concerning Bell Atlantic's Performance Monitoring Report ("PMR") submissions filed pursuant to the *Bell Atlantic/NYNEX Merger Order*[1] and the progress Bell Atlantic has made in filing such reports.

In November 1997 and February 1998, Bell Atlantic filed its PMR submissions in accordance with the *Bell Atlantic/NYNEX Merger Order*.[2] After ASD staff reviewed the PMR submissions and identified certain issues with these filings, we released a letter directing Bell

[1] NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order*, 12 FCC Rcd 19985 (1997)(*Bell Atlantic/Nynex Merger Order).*

[2] *See* Notice of Filing Schedule for Bell Atlantic Performance Monitoring Reports, *Public Notice,* 13 FCC Rcd 2229 (1998) (establishing filing schedule for Bell Atlantic performance monitoring reports).

Atlantic to revise its PMR submissions in order to be consistent with Appendix D of the *Bell Atlantic/NYNEX Merger Order* ("Appendix D").[3] In a series of meetings with ASD staff, Bell Atlantic representatives discussed and agreed to correct these issues. Specifically, Bell Atlantic will revise the labelling format of its PMR submissions and provide corrected copies of the November 1997 and February 1998 PMR submissions on or before July 6, 1998. In addition, Bell Atlantic will provide a glossary of terms and detailed definitions as a common reference document for future PMR filings no later than the August 1998 PMR submission.[4] We anticipate that these actions will help ensure that the PMR data is clear, usable, and consistent with Appendix D of the Merger Order.

[3] *See generally* Letter from Kenneth P. Moran, Chief, Accounting Safeguards Division, FCC, to Patricia E. Koch, Assistant Vice President, Government Relations, 13 FCC Rcd 7326 (1998).

[4] In a meeting with ASD staff on June 3, 1998, Bell Atlantic noted that it has raised its standard for reporting dedicated final trunk blockage from the B.01 standard stated in Appendix D to the B.005 used for common trunk blockage. Bell Atlantic will describe these activities in the forthcoming glossary document.

Bell Atlantic's May 1998 PMR submission contained certain labelling and reporting errors that were not evident in earlier submissions. Specifically, the paper and electronic versions of the May 1998 PMRs contain different data in some metrics.[5] In addition, Bell Atlantic erroneously labelled certain proprietary data as "non-proprietary." After discussing these issues with ASD staff, Bell Atlantic has been correcting the labelling and reporting errors and will provide a corrected version of the May 1998 PMR submission on or before July 6, 1998. We anticipate that Bell Atlantic's review and re-examination will ensure that the May 1998 PMR data is accurate and consistent with Appendix D of the Merger Order.

As a general matter, we are encouraged by Bell Atlantic's efforts to implement this reporting program. We are concerned, however, about the error rates we have found in the three submissions Bell Atlantic has filed to date. We believe Bell Atlantic is working to solve the problems and we fully expect that these issues will not arise in the August 1998 and subsequent filings. If there is anything the ASD staff can do to facilitate the reporting process, please feel free to contact us at any time. In the meantime, if you have any questions concerning this letter or would like to further discuss these issues, please feel free to contact Anthony Dale at (202) 418-2260 or Whiting Thayer at (202) 418-0822.

Sincerely,

Kenneth P. Moran
Chief, Accounting Safeguards Division

[5] For example, in Metric 20.01, % Dedicated Final Trunk Blockage, reported for Maryland in the May 1998 PMR filing, the non-proprietary paper submission showed results of 0.00, 0.00, and 0.50 for the three months covered by the PMR. The non-proprietary electronic submission, however, showed results of 0.00, 0.00, and 0.00, respectively.

Federal Communications Commission
Washington, D.C. 20554

In reply refer to:

April 13, 1998

Released: April 13, 1998

Ms. Patricia E. Koch
Assistant Vice President, Government Relations - FCC
Bell Atlantic Corporation
1300 I Street NW, Suite 400W
Washington, DC 20005

Dear Ms. Koch:

The Accounting Safeguards Division ("ASD") has found several deficiencies in Bell Atlantic's Performance Monitoring Report ("PMR") submissions filed pursuant to the *Bell Atlantic/NYNEX Merger Order*.[1] In this letter, we direct Bell Atlantic to revise its PMR definitions and to update its reporting procedures in order to ensure consistency with Appendix D of the *Bell Atlantic/NYNEX Merger Order* ("Appendix D"). In addition, we address several suggestions presented by Bell Atlantic to improve the definitions of individual metrics.[2]

Metric 2: OSS Interface Availability. Bell Atlantic appears to have mislabelled this measurement. Appendix D defines this metric as "% of Time OSS Interface is actually available compared to scheduled availability." Bell Atlantic's subsmissions indicate that this metric is reported in "hours" instead of a percentage. To maintain consistency with Appendix D, Bell Atlantic should revise the label of its subsmissions and report data in this metric as a percentage.

Metric 8: Average Offered Interval. In its February 3, 1998 letter, Bell Atlantic suggests that future reports show the average offered interval for "Special Services - Dispatch (Total) for Retail, Resale, and UNE" because the line size breakouts specified in Appendix D do not produce meaningful measures. Specifically, Bell Atlantic noted that the intervals offered for Retail, Resale, and UNE Special Services are based on the product instead of the line size of the order. We believe that this is a reasonable suggestion and, therefore, we permit Bell Atlantic to file PMRs with this modified definition for Metric 8, so long as Bell Atlantic notes the modification on its future submissions.

Metric 9: Average Completed Interval. In its February 3, 1998 letter, Bell Atlantic

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[1] NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order*, FCC 97-286 (rel. August 14, 1997).

[2] Letter from Patricia E. Koch, Assistant Vice President, Government Relations, to Anthony Dale, Attorney, Accounting & Audits Division, Common Carrier Bureau, FCC 1 (Feb. 3, 1998).

suggests that future reports for Metric 9 show the average completed interval for "Special Services - Dispatch (Total) for Retail, Resale, and UNE" because the line size breakout for special services does not produce meaningful measures. We believe that this is a reasonable suggestion and, therefore, permit Bell Atlantic to file PMRs with this modified definition for Metric 8, so long as Bell Atlantic notes the modification on its future submissions.

Metric 11: % Missed Installation Appointment. Bell Atlantic entitled this metric "% Missed Appointment - BA," and reports Interconnection Trunks (11.10 and 11.11) as the percentage of trunks (for north states) and the percentage of orders (for south states). Appendix D of the Order labels this metric "% Missed Installation Appointments." To avoid possible confusion, Bell Atlantic should label this metric consistently with Appendix D of the Order. Additionally, Bell Atlantic should report Interconnection Trunks (11.10 and 11.11) as the percentage of orders for both northern and southern states as specified in Appendix D.

Metric 12: Facility Missed Orders. Bell Atlantic entitled this metric "% Missed Appointment - Facilities," and reports Interconnection Trunks (12.07 and 12.08) as the percentage of trunks (for north states) and the percentage of orders (for south states). In Appendix D, this metric is labelled "Facility Missed Orders." To avoid possible confusion, Bell Atlantic should label this metric consistently with Appendix D of the Order. Additionally, Bell Atlantic should report Interconnection Trunks (12.07 and 12.08) as the percentage of orders for both northern and southern states as specified in Appendix D.

In its February 3, 1998 letter, Bell Atlantic suggests that the reports for Metric 12 should show the percent of installation appointments missed due to lack of facilities for Retail POTS, Resale POTS, and UNE POTS without further disaggregating the measurements into "dispatch" and "no dispatch" categories. Because this change will increase the accuracy of the reports, Bell Atlantic is permitted to make this minor modification so long as Bell Atlantic annotates this modification on the reports filed with the Commission and provided to third parties.

Metric 13: % Installation Troubles within 30 Days. Appendix D defines this metric as "Troubles received on lines within 30 days of service order activity as a percent of lines ordered in 30 days." Bell Atlantic's PMR Definitions describe this metric as reporting the "Percentage of Lines/Circuits/Trunks Installed for which a Network Trouble is reported and found within 30 days of installation (or service order activity)." We require Bell Atlantic to remove the qualifiers "network trouble" and "and found" from its definition, and report data in accordance with the definition in Appendix D.

Metric 14: Customer Trouble Report Rate. Appendix D defines this metric as "Initial Customer direct or referred troubles reported within a calendar month where cause is determined to be found to be in the network (not customer premises equipment, inside wire, or carrier equipment) per 100 lines/circuits in service." Bell Atlantic's PMR Definitions describe this metric as reporting troubles on regulated services, but the Appendix D definition does not distinguish between regulated or nonregulated services. Therefore, Bell Atlantic should report all Customer Trouble Reports in accordance with the Appendix D definition. In addition, Bell Atlantic should include a

notation in its data submissions for metric 14 identifying the unit of measurement as "per 100 lines/circuits in service."

Metric 15: Missed Repair Appointments. Appendix D defines Metric 15 as the percent of Trouble Reports not cleared by the date and time committed, excluding misses where the competing carrier or end user causes the missed appointment. Bell Atlantic modifies the definition of Metric 15 with the phrase "Initial Customer Trouble Reports found to be network troubles." We require Bell Atlantic to remove the modification "Initial Customer Trouble Reports, found to be network troubles (Disposition Codes 3, 4, and 5" from its PMR Definitions, and report all Missed Repair Appointments except those explicitly excluded by Appendix D.

Metric 16: Mean Time to Repair. Appendix D defines Metric 16 as the "[a]verage duration time from receipt of trouble report to clearing of trouble report." In its submissions, Bell Atlantic notes that it will report on "Initial Customer Trouble Reports found to be network troubles." We require Bell Atlantic to remove the qualifiers "Initial Customer Trouble Reports," and "found to be network troubles," and report the average duration of time to clear a trouble report as specified in Appendix D. Additionally, because Appendix D requires that special circuits and trunks be reported as "Stop Clock," Bell Atlantic should report metric 16.08 Interconnection Trunks as Stop Clock instead of "Total Hours."

Metric 17: Out of Service > 24 Hours. Appendix D defines this metric as "the percent of troubles cleared in excess of 24 hours." Bell Atlantic's submissions describe this metric as reporting the "percentage of network troubles." Bell Atlantic's submissions further note that the "Out of Service period commences when the trouble is entered into BA's designated trouble reporting interface." We require Bell Atlantic to remove the qualifier "network troubles" from its definition and to report data in accordance with the definition in Appendix D. In addition, Bell Atlantic should measure the "Out of Service period" from the time they receive the trouble report in accordance with our ARMIS procedures, instead of when the trouble report is entered into Bell Atlantic's system.[3]

Metric 18: % Repeat Trouble Reports within 30 days. Appendix D defines this metric as "Trouble reports on the same line/circuit as a previous trouble report within the last 30 calendar days as a percent of total troubles reported." Bell Atlantic's PMR Definitions modifies this definition by reporting troubles that originated as a disposition code other than CPE or a customer

[3] As part of the Automated Reporting Management Information System ("ARMIS"), incumbent local exchange carriers file annual service quality reports that include data for "Out-of-Service Average Repair Interval." ARMIS 43-05 Row Instructions, Row 0145 Out-of-Service Average Repair Interval defines the interval as "the total time from receipt of the customer trouble to clearing the trouble. Clearing represents the final disposition of the report, either repairing the problem or closing the report to another category, such as a no trouble found category." *See* Revision of ARMIS Annual Summary Report (FCC Report 43-01), ARMIS USOA Report (FCC Report 43-02), ARMIS Joint Cost Report (FCC Report 43-03) ARMIS Access Report (FCC Report 43-04), ARMIS Service Quality Report (FCC Report 43-05), ARMIS Customer Satisfaction Report (FCC Report 43-06), ARMIS Infrastructure Report (FCC Report 43-07), and ARMIS Operating Data Report (FCC Report 43-08) for Certain Class A and Tier 1 Telephone Companies, *Order*, DA 97-2621 (Com. Car. Bur. rel. Dec. 16, 1997).

code that has an additional trouble within 30 days for which a network trouble is found. We require Bell Atlantic to remove the qualifiers "other than CPE," and "for which a network trouble is found," and report data in accordance with the Appendix D definition.

Metric 19: % Common Trunk Blocking. Bell Atlantic erroneously reported Dedicated Final Trunk Blockage in this metric. We require Bell Atlantic to correct this error and report the percentage of Common Trunk Blocking exceeding the engineering design blocking standard of B.005. We also direct Bell Atlantic to specify in its submissions that Metric 19 reports data using the design blocking standard of B.005 only.

Metric 20: % Dedicated Final Trunk Blocking. Bell Atlantic erroneously reported Common Final Trunk Blockage in this metric. We require Bell Atlantic to correct this error and report the percentage of Dedicated Final Trunk Blocking exceeding the engineering design blocking standard of B.01. We also direct Bell Atlantic to specify in its submissions that Metric 20 reports data using the design blocking standard of B.01 only.

We recognize that the data collection systems deployed in the northern states may be different than those used in the southern states, and that these systems may be the reasons behind certain differences in the way Bell Atlantic reports PMR data. Reporting measurements in a uniform manner, however, is absolutely critical for Commission staff to analyze and evaluate the PMR data. Therefore, we expect Bell Atlantic to standardize its reporting procedures and measurements between northern and southern states as soon as possible. For those PMRs that are not yet standardized, such as Metric 11 and Metric 12, Bell Atlantic should provide a plan, including an implementation schedule, for reporting the PMR data for the northern and southern states in a uniform manner.

As a final matter, we expect Bell Atlantic to provide revised submissions of the PMRs within a reasonable time after receipt of this letter. Because resubmitting the PMRs may require Bell Atlantic to reference the raw data underlying the November 12, 1997 and February 17, 1998 filings, Bell Atlantic should take immediate steps to revise its PMR submissions, which may require keeping the raw data for longer than the 150 day period stated in Appendix D.

If you have any questions concerning this letter or would like to discuss the issues addressed, please feel free to contact Anthony Dale at (202) 418-2260.

Sincerely,

Kenneth P. Moran
Chief, Accounting Safeguards Division
Common Carrier Bureau, FCC

Federal Communications Commission
Washington, D.C. 20554

July 6, 1998

Released: July 6, 1998

Ms. Patricia E. Koch
Assistant Vice President, Government Relations - FCC
Bell Atlantic Corporation
1300 I Street NW, Suite 400W
Washington, DC 20005

Dear Ms. Koch:

In a letter released on June 24, 1998, the Accounting Safeguards Division ("ASD") addressed the resolution of certain issues concerning Bell Atlantic's Performance Monitoring Report ("PMR") submissions filed pursuant to the *Bell Atlantic/NYNEX Merger Order*[1] and the progress Bell Atlantic has made in filing such reports. In that letter, we required Bell Atlantic to provide corrected versions of its November 1997, February 1998, and May 1998 PMR submissions.

While examining its PMR submissions, Bell Atlantic identified certain technical errors with its revised PMR submissions. In order to correct these errors, and thus provide the Commission with accurate PMR submissions, Bell Atlantic has requested an extension of time. We are encouraged to see Bell Atlantic's efforts to ensure the company provides accurate and timely PMR submissions, and we therefore grant an extension of time, so that Bell Atlantic may provide the corrected versions of its PMR submissions by July 10, 1998.

If you have any questions concerning this letter or would like to further discuss these issues, please feel free to contact Anthony Dale at (202) 418-2260 or Whiting Thayer at (202) 418-0822.

Sincerely,

Kenneth P. Moran
Chief, Accounting Safeguards Division

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[1] NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order*, FCC 97-286 (rel. Aug. 14, 1997).